

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MANUEL WINN,

Plaintiff,

vs.

JAMES G. COX, et al.,

Defendants.

Case No. 3:14-cv-00025-RCJ-VPC

ORDER

Plaintiff, who is a prisoner in custody at the Ely State Prison, has submitted an application to proceed in forma pauperis (#1) and a civil rights complaint pursuant to 42 U.S.C. § 1983. The court will defer ruling upon the application. The court has reviewed the complaint, and plaintiff will need to submit an amended complaint.

When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Allegations of a pro se complainant are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” . . . [T]he pleading standard Rule 8 announces does not require “detailed factual allegations,” but it demands

1 more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that
 2 offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action
 3 will not do.” Nor does a complaint suffice if it tenders “naked assertion[s]” devoid of
 4 “further factual enhancement.” . . .

5 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim to
 6 relief that is plausible on its face.” A claim has facial plausibility when the plaintiff pleads
 7 factual content that allows the court to draw the reasonable inference that the defendant is
 8 liable for the misconduct alleged. The plausibility standard is not akin to a “probability
 9 requirement,” but it asks for more than a sheer possibility that a defendant has acted
 10 unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s
 11 liability, it “stops short of the line between possibility and plausibility of ‘entitlement to
 12 relief.’”

13 Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (citations omitted).

14 The defendants in this action are all people. Plaintiff has sued them in their individual
 15 capacities and in their official capacities.

16 Personal-capacity suits seek to impose personal liability upon a government official for
 17 actions he takes under color of state law. . . . Official-capacity suits, in contrast, “generally
 18 represent only another way of pleading an action against an entity of which an officer is an
 19 agent.”

20 Kentucky v. Graham, 473 U.S. 159, 165 (1985) (internal citations omitted).

21 The complaint has three counts, and all of them have the same defect regarding defendants
 22 Cox and Baker. Defendant Cox is the Director of the Nevada Department of Corrections, and
 23 defendant Baker is the Warden of the Ely State Prison. They occupy supervisory positions. “A
 24 supervisor may be liable if there exists either (1) his or her personal involvement in the
 25 constitutional deprivation, or (2) a sufficient causal connection between the supervisor’s wrongful
 26 conduct and the constitutional violation.” Hansen v. Black, 885 F.2d 642, 645-46 (9th Cir. 1989).
 27 In all three counts, plaintiff has not alleged any facts showing personal involvement or a causal
 28 connection between the events alleged and defendants Cox and Baker. In the amended complaint,
 plaintiff will need to allege such facts, in addition to correcting the defects noted below.

Counts 1 and 3 involve plaintiff’s Muslim beliefs. In count 1, plaintiff alleges that
 defendants Cox and Baker are keeping him from attending Friday prayers in the prison’s chapel. In
 count 3, plaintiff alleges that defendants Cox, Baker, Silverstein, and Mallinger subject him to body

1 cavity searches after his ritual purification and before attending Friday prayers.¹ Plaintiff claims that
 2 these defendants have violated the First Amendment, the Religious Land Use and Institutionalized
 3 Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq., and the Religious Freedom Restoration Act
 4 (RFRA), 42 U.S.C. § 2000bb et seq. Plaintiff's allegations regarding the First Amendment and
 5 RLUIPA are plausible. He will need to re-allege them in the amended complaint. On the other
 6 hand, RFRA is not enforceable against states. City of Boerne v. Flores, 521 U.S. 507 (1997).
 7 Plaintiff will need to omit references to RFRA in his amended complaint.

8 Plaintiff seeks both monetary damages and injunctive relief for counts 1 and 3. Plaintiff may
 9 recover monetary damages for First Amendment violations by defendants in their individual
 10 capacities. Plaintiff may not recover monetary damages for First Amendment violations by
 11 defendants in their official capacities, because neither the State of Nevada nor the Nevada
 12 Department of Corrections are people within the meaning of 42 U.S.C. § 1983. See Will v.
 13 Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Plaintiff still may receive injunctive relief
 14 against the defendants in their official capacities for violations of the First Amendment. Ex parte
 15 Young, 209 U.S. 123, 159-60 (1908). Monetary damages are not available for violations of
 16 RLUIPA. Sossamon v. Texas, 131 S. Ct. 1651, 1663 (2011) (official-capacity claims); Wood v.
 17 Yordy, ___ F.3d ___, 2014 WL 2462575 (9th Cir. 2014) (individual-capacity claims).

18 In count 2, plaintiff alleges that defendants Cox, Baker, and Kerner are deliberately
 19 indifferent to his health because they do not provide him with insulated underwear, in violation of
 20 the Eighth Amendment. Ely State Prison is in a location that can have temperatures below freezing
 21 during the winter. However, the Eighth Amendment requires that cells have adequate heating.
 22 Keenan v. Hall, 83 F.3d 1083, 1091 (9th Cir. 1996), amended by 135 F.3d 1318 (9th Cir. 1998).
 23 Also, the Eighth Amendment requires only that adequate clothing be provided to petitioner, but it
 24 does not require specific items of clothing. Walker v. Sumner, 14 F.3d 1415, 1421 (9th Cir. 1994).

25
 26
 27 ¹Counts 1 and 3 are not contradictory. Plaintiff alleges that he has been denied attendance at
 28 Friday prayers from May 9, 2012, to October 1, 2012, and from August 16, 2013, to the date of
 filing of the complaint. Plaintiff alleges that he has been subject to body cavity searches from
 November 9, 2012, through August 16, 2013, when apparently he was able to attend Friday prayers.

1 If prison officials heated plaintiff's cell and provided clothing that would keep plaintiff from
2 freezing while he was outside, then they satisfied the constitutional requirements. To proceed with
3 count 2, plaintiff would need to allege not that defendants Cox, Baker, and Kerner refused to
4 provide him with insulated underwear, but that defendants Cox, Baker, and Kerner refused to
5 provide him with any warm clothing.

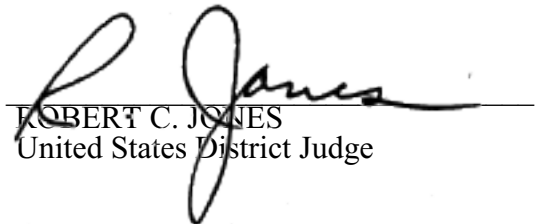
6 IT IS THEREFORE ORDERED that a ruling on the application to proceed in forma
7 pauperis is **DEFERRED**.

8 IT IS FURTHER ORDERED that the clerk of the court shall file the complaint.

9 IT IS FURTHER ORDERED that the clerk shall send to plaintiff a civil rights complaint
10 form with instructions. Plaintiff will have thirty (30) days from the date that this order is entered to
11 submit his amended complaint, if he believes that he can correct the noted deficiencies. Failure to
12 comply with this order will result in the dismissal of the claims that the court has found to be
13 defective.

14 IT IS FURTHER ORDERED that plaintiff shall clearly title the amended complaint as such
15 by placing the word "AMENDED" immediately above "Civil Rights Complaint Pursuant to 42
16 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the case number, 3:14-cv-00025-
17 RCJ-VPC, above the word "AMENDED."

18 Dated: July 7, 2014

19
20
21 
22 ROBERT C. JONES
23 United States District Judge
24
25
26
27
28